
(1972) 04 MP CK 0039
In the Madhya Pradesh High Court
Case No : M.P. No. 47 of 1969

Municipal Corporation, Indore

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 04-04-1972

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 248, 57
Madhya Pradesh Municipal Corporation Act, 1956 — Section 7, 80, 82
Madhya Pradesh Municipalities Act, 1961 — Section 100, 101, 80

Citation : (1972) JLJ 614

Hon'ble Judges : S.R. Vyas, J;G.L. Oza, J

Bench : Division Bench

Advocate : B.P. Jhanjaria, for the Appellant; S.L. Dubey, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Oza, J.—This petition has been filed by the Municipal Corporation, Indore, challenging the orders of Collector, Indore, and Commissioner, Indore Division, directing that open pieces of land within the limits of the Indore Municipal Corporation shall be managed by the Nazul Officer.

2. In this petition, the petitioner contends that the Indore Municipal Corporation is constituted in accordance with section 7 of the Madhya Pradesh Municipal Corporation Act, 1956, and is under the provisions of that Act a legal person. It is alleged that initially the Indore Municipality was constituted under the Indore Municipality Act, 1909. Under this Act, all the open lands within the limits of the Indore Municipality vested in the Municipality and were under its management. According to the petitioner, this was provided for in section 36 of the Indore Act. By virtue of that provision, the Indore Municipality was managing the open lands by leasing them out and issuing licences under the bye-laws. It is also submitted that under the Indore Act the Holkar State Government had framed rules and bye-laws for the management of these open lands within the municipal limits by

the Municipality, and the Revenue Department had no control or power about the management of these lands. It is further stated that in the year 1954 when the Indore Act was replaced by the M.B. Municipalities Act, 1954 and this municipality was converted into a Municipal Corporation under the M.B. Municipal Corporation Act, 1956, during these changes the properties that had vested in the municipality continued to so vest under the M.B. Municipalities Act as also under the M.B. Municipal Corporation Act. The petitioner further stated that in June 1917, by an order passed by the Holkar State Government, all open lands and sites within the municipal limits were transferred to the municipalities concerned except any land which formed private property of any person or a property in exclusive possession of any department of the State. A copy of this order notified under a notification is also filed with the petition. It is further contended that the Indore Municipality developed these open lands into house-sites and leased them out for respective purposes and also issued licences for the use of these lands, and at no time the Government had anything to do with the said lands. The petitioner further stated that in the year 1961 the M.B. Municipal Corporation Act was replaced by the M.P. Municipal Corporation Act and the provisions of this new Act were identical with those of the M.B. Act. u/s 82 of the M.P. Municipal Corporation Act, the properties vested in a Municipal Corporation have been mentioned. It is contended that this provision protected the rights of the municipality under which these properties had vested in it earlier and even under the M.P. Act the properties continued to be vested in the petitioner-Corporation. According to the petitioner, section 80 of the M.P. Municipal Corporation Act also provided for the manner in which open lands were to be managed by the Corporation and thus the scheme of this Act also indicates that these open lands vested in the Municipal Corporation. The petitioner submitted that after 1964 the Government raised a controversy claiming these open lands to be Nazul lands and saying that they could be managed by the Nazul Officer. There were certain departmental instructions to that effect issued by the Government. Consequently, according to the petitioner, the Collector, District Indore, wrote a letter to the Commissioner, Indore Municipal Corporation, challenging the right of the Corporation to dispose of some of these open plots of land by the Corporation. This resulted in an exchange of correspondence, and a representation was made to the Collector on 8th November 1968. The Revenue Commissioner, Indore Division, sent an order to the Administrator, Municipal Corporation, Indore, directing that no new leases should be given by the Corporation in respect of any open land within the limits of the Corporation as, according to the Commissioner, these lands fell within the Nazul Department and could, therefore, only be leased out by the Nazul Officer. In consequence of this, the petitioner Corporation, after making a demand of justice, has filed this petition before us.

3. In the return filed by the respondents, there is no dispute about facts except that the Holkar Government order of June 1917, which has been referred to by the petitioner, is said to be issued not in connection with the Indore Municipal Act

but issued under the Indore District Municipalities Act. It is not, however, disputed that under the Indore Municipal Act the properties vested in the municipality and they continued to so vest even under the M.B. Act. It is also not disputed that the properties remained so vested even under the M.P. Municipal Corporation Act and were under the management and control of the Corporation. The main contention advanced in the return appears to be that under the various provisions of the Indore Act, Madhya Bharat Act and M.P. Act, the properties did not vest in ownership rights in the municipality or the Municipal Corporation, but these local bodies had only a right to manage the properties in accordance with the Act and for the purposes of the Act. It was, therefore, contended that the Government being the absolute owner of these properties, it could withdraw the management of the properties from the Corporation and consequently the Government and the Nazul authorities were competent to deal with these properties under Revenue Book Circular IV-1 dealing with the Nazuls.

4. Shri Jhanjaria appearing for the petitioner contended that the Indore Municipality was constituted initially under the Indore Municipal Act and even apart from the order about which a dispute has been raised by the respondents, under the provisions of section 36 of the Indore Act itself all these properties vested in the Municipality of Indore. Later under the M.B. Act these properties continued to vest in the Indore Municipality until the said municipality was converted into a Corporation. Under the provisions of the M. B. Municipal Corporation Act and then of the M.P. Municipal Corporation Act the properties continued to vest in the Indore Municipal Corporation. Learned Counsel contended that the properties so vested in the Corporation under a statute could not be divested merely by application of Revenue Book Circular IV-1 which has no statutory sanction and appears only to be administrative instructions. He also contended that the controversy raised in the return about the extent and scope of the rights that vested in the Corporation in respect of these lands is of no consequence as in the present petition there is no controversy as to the extent of such rights under various statutes that are available to the Corporation. According to the Learned Counsel, the only question that arises for determination is as to whether by executive instructions the Corporation could be divested of these rights which vested in it under various statutes.

5. Shri Dubey, learned Government Advocate for the respondents, contended that the scheme of the M.P. Land Revenue Code indicates that all lands belong to the Government. He referred to various provisions of the Code pertaining to the scheme of assessment, and contended that this clearly goes to show that the State is the ultimate owner of all lands. According to him, what was transferred to the municipalities under the various statutes was the power of management, and the properties only vested in the local bodies as trustees and they were expected to manage them in accordance with and for the purposes of the Act. In this view of the matter, Learned Counsel contended that the State is the ultimate owner of all lands and by its administrative instructions contained in the Revenue Book Circular IV-1 it could always withdraw the management of these lands from

the hands of the local bodies. Consequently, according to the Learned Counsel, the Nazul authorities were acting within their powers when they asked the Corporation not to lease out or dispose of any of the open sites in the town. Learned Government Advocate could not suggest any statutory sanction so far as the Revenue Book Circulars are concerned. But he contended that section 57 of the M.P. Land Revenue Code clearly indicates that the State is the owner of all lands.

6. Section 36 of the Indore Municipal Act, 1909 reads thus.:

"36. (1) Subject to any special reservation which may be made by the Government, all property of the nature hereinafter in this section specified and situated within the limits of the Municipality shall be municipal property vested in the Commissioner on behalf of the Government and shall, with all other property which may become so vested, be under his direction, management and control, and shall be held and applied by him for the purposes of this Act, that is to say :-

(a) All public town-walls, gates, markets, slaughter houses, manure and night-soil depots and public buildings of every description which have been constructed or are maintained out of the Municipal Fund;

(b) All public streams, springs and works for the supply, storage and distribution of water for public purposes, and all bridges, buildings engines, materials and things connected therewith or appertaining thereto and also any adjacent land (not being private property) appertaining to any public tank or well;

(c) All public sewers and drains, and all sewers, drains, culverts and water-courses in, alongside or under any street, and all works, materials and things appertaining thereto;

(d) all dust, dirt, dung, ashes, refuse, animal matter or filth or rubbish of any kind, or dead bodies of animals collected by the Municipal servants, from the streets, houses, privies, sewers, cess-pools or elsewhere, or deposited in places fixed u/s 49;

(e) all public lamps, lamp posts, and apparatus connected therewith or appertaining thereto;

(f) all land or other property transferred to the Municipality by gift, purchase or otherwise for local public purposes;

(g) all streets, and the pavements, stones and the other materials thereof, and all trees, erections, materials, implements and things provided for such streets; and (h) all lands and open sites which are neither private property nor are in possession of any department of the State.

(2) The Government may, by notification in the Holkar Government Gazette direct that any property which has vested under subsection (1) in the Commissioner shall cease to be so vested, and thereupon the property specified in the notification shall cease to be so vested, and "the Government may pass

such orders as it think fit regarding the disposal and management of such property".

It is clear from this provision that subject to any reservation which the State Government may make the properties mentioned in this section shall vest in the municipality and shall be municipal properties. Clause (b) of sub-section (1) of this section refers to open sites which are neither private properties nor are in possession of any department of the State. It cannot, therefore, be doubted, and it is also not contested, that by the constitution of the Indore Municipality under the provisions of the Indore Municipal Act, 1909, all open lands, which were neither private property and nor in possession of any particular department of the State, became municipal property and vested in the Commissioner, and in consequence all these open lands were managed, leased out and disposed of by the Indore Municipality. In 1954 the Indore Act was substituted by the M.P. Municipalities Act and section 2 and its proviso saved the Municipalities constituted under the old Act and all actions taken under that Act. Section 48 of the M.B. Act provided for vesting of the properties in a municipality, and it was as follows :

"48. All property of the nature hereinafter in this section specified, and not being specially reserved by the Government shall be vested in and belong to the municipality, and shall, together with all other property, of what nature of kind soever not being specially reserved by the Government, which may become vested in the municipality, be under their direction, management and control, and shall be held and applied by them as trustees, subject to the provisions and for the purposes of this Act, that is to say-

(a) all public town-walls, gates, markets, slaughter houses, manure and night-soil depots, and public buildings of every description;

(b) all public stream, tanks, reserviors, cisterns, wells, springs, aqueducts, conduits, tunnels, pipes, pumps and other waterworks, and all bridges, buildings, engines, works, materials and things "connected therewith or appertaining thereto, and also any adjacent land (not being private property), appertaining to any public tank or well;

(c) all public sewers and drains, and all sewers, drains, tunnels, culverts, gutters and water courses in, alongside and under any streets, and all works, materials and things appertaining thereto, as also all dust, dirt, dung, ashes, refuse, animal matter, filth, night-soil or rubbish of any kind collected by the municipality or by customary or private sweepers from the streets, houses, privies, sewers, cesspools, or elsewhere;

(d) all public lamps, lamp-posts, and apparatus connected therewith, or appertaining thereto;

(e) all lands transferred to them by the Government, or by gift or otherwise for local public purposes;

(f) all public streets, and the pavements, stones and other materials also thereof and also all trees, erections, materials, implements and things provided for such streets."

This provision clearly indicates that the properties will continue to vest in the municipality except if any reservations are made by the Government. It is also clear from the provisions of this Act that the municipality shall apply these properties as trustees subject to the provisions and for the purposes of this Act. It cannot, therefore, be disputed that the properties that vested in the municipality under the Indore Act continued to vest in it even after the M.B. Act came into force. This Act was later substituted by the M.P. Municipalities Act, section 100 of which is as under:

"100. (1) Subject to any special reservation made or any special conditions imposed by the State Government, all property of the nature hereinafter in this section specified within the limits of the Municipality, shall vest in and be under the control of the Council and with all other property which has already vested, or may hereafter vest in the Council, shall be held and applied by it as trustees for the purposes of this Act, that is to say-

(a) all public town walls, gates, markets, slaughter-houses, manure and night soil depots and public buildings of every description which have been constructed or maintained out of the Municipal Fund;

(b) all public streams, tanks, reservoirs, cisterns, wells, springs, aqueducts, conduits, tunnels, pipes, pumps and other water works, and all bridges, buildings, engines, works, materials and things connected with "or appertaining thereto, and also adjacent land not being private property, appertaining to any public tank or well;

(c) all public sewers and drains and all sewers, drains, tunnels, culverts, gutters and water-courses in, alongside or under any streets and all works, materials and things appertaining thereto;

(d) all dust, dirt, dung, ashes, refuse, animal matter, filth, night-soil or rubbish of any kind collected by the Council or by any customary or private sweeper from the streets, houses, privies, sewers, cesspools or elsewhere;

(e) all public lamps, lamp-posts and apparatus connected therewith, or appertaining thereto;

(f) all public streets, not being land owned by the State Government and the pavement, stone and other material thereof and also trees growing on and erections, materials, implements and things provided for such street.

(g) all lands and/or other property transferred to the Council by the State Government or acquired by gift, purchase or otherwise for public purposes.

(2) The State Government may, by notification, direct that any property which has vested in the Council shall cease to be so vested; and thereupon the

property specified in the notification shall cease to be so vested, and the State Government may pass such orders as it thinks fit regarding the disposal and management of such property.

(3) The State Government may resume any immovable property transferred to the Council by itself or any other local authority, where such property is required for a public purpose, without payment of any compensation other than the amount paid by the Council for such transfer and the market value at the date of resumption of any building or works subsequently erected or executed thereon by the Council:

Provided that before taking any such action, the State Government shall obtain and take into consideration the view or objections of the Council:

Provided further that compensation need not be paid for buildings or works constructed or erected in contravention of the terms of the transfer."

This section clearly indicates that all property of the nature specified therein within the limits of the municipality shall vest in and be under the control of the municipality of course subject to any reservation made or conditions imposed by the State Government under the Act. It cannot be doubted that in fact these properties vested in the municipality even before this Act came into force and there is no case of any reservations or conditions prescribed by the State under the Act. It is no doubt true that the restriction provided in this section was that the properties shall be applied and held as trustees for the purposes of the Act. Clause (g) of sub-section (1) of section 100 of this Act clearly refers to the properties of the kind which are in dispute in this petition. Subsections (2) and (3) of this section provide the manner in which the Government can, if it so desires, take back the property which vested in the municipality under this Act. In any event, that question is not before us and it is not the case of the Government that they have chosen to act under these sub-sections of section 100. There is, therefore, no need to go into the question as to whether under subsections (2) and (3) of section 100 the Government could take action pertaining to the properties which had vested in the petitioner long before this Act came into force. As there is no dispute that the Government had not chosen to act under these provisions, it is not necessary for us to go into that question, and it cannot be disputed that the properties, which vested in the Indore Municipality long before the passing of this Act, continued to vest in it. Section 101 of this Act also indicates that even under the present Act transfer of certain lands with the Nazul Department to a municipal council is contemplated. This only indicates that where municipalities may be constituted under the provisions of this Act for the first time, it may be possible for the State to transfer such open pieces of land. This clearly shows that vesting of properties in local bodies even under the scheme of this Act is not a matter not contemplated. In 1956, M.B. Municipal Corporation Act was brought into force and later the same Act with slight modifications was enacted as the M.P. Municipal Corporation Act which came into force in 1961. Section 80 of the M.P. Municipal Corporation Act is as

under :

"80. (1) No streets, nazul lands, public places, drains or irrigation channels shall be sold, leased or otherwise alienated, save in accordance with such bye-laws as may be made in this behalf.

(2) Subject to the provisions of sub-section (1) -

(a) the Commissioner may, in his discretion grant a lease of any immovable property belonging to the Corporation, including any right of fishing or of gathering and taking fruit, flowers and the like of which the premium or rent or both as the case may be, does not exceed five hundred rupees for any period not exceeding twelve months at the time:

Provided that every such lease granted by the Commissioner, other than the lease or the class in respect of which Standing Committee has by resolution exempted the Commissioner from compliance with the requirements of this proviso, shall be reported by him to the Standing Committee within 15 days after the same has been granted;

(b) within the sanction of the Standing Committee, the Commissioner may by sale or otherwise grant a lease of immovable property including any such right as aforesaid, for any period not exceeding three years at a time of which the premium or rent or both, as the case may be, for any of one year does not exceed three thousand rupees;

(c) with the sanction of the Corporation the Commissioner may lease, sell, otherwise convey any immovable property belonging to the Corporation.

(3) The Commissioner may-

(a) in his discretion dispose of by sale, letting out on hire or otherwise, any movable property belonging to the Corporation not exceeding five hundred rupees in value;

(b) with the sanction of Standing Committee, dispose of by sale, letting out on hire or otherwise any immovable property belonging to the Corporation not exceeding five thousand rupees in value;

(c) with the sanction of the Corporation sell, let out on hire or otherwise convey any "movable property belonging to the Corporation.

(4) The sanction of the Standing Committee or of the Corporation under sub section (2) or sub-section (3) may be given either generally for any class of cases or specifically in any particular case.

(5) The foregoing provisions of this section shall apply to every disposal of property belonging to the Corporation made under or for the purpose of this Act:

Provided that-

(i) no property vesting in the Corporation in trust shall be leased, sold or otherwise conveyed in a manner that is likely to prejudicially affect the purpose of the trust subject to which such property is held;

(ii) no land exceeding twenty five thousand rupees in value shall be sold or otherwise conveyed without the previous sanction of the Government and every sale or other conveyance of property vesting in the Corporation shall be deemed to be subject to the conditions and limitations imposed by this Act or by any other enactment for the time being in force."

This provision clearly indicates and provides for a complete scheme for management of properties within the limits of the Corporation. It is, therefore, clear that this section also provides for the management of the properties that had already vested in the Corporation long before the Act came into force. Section 82 of the M.P. Municipal Corporation Act is as under :

"82. Subject to any special reservation made or to any special conditions imposed by the Government all property of the nature hereinafter in this section specified and situated within the city, shall vest in and be under the control of the Corporation and with all other property which has already vested or may hereafter vest in the Corporation shall be held and applied by it for the purposes of this Act, namely-

(a) all public gates, markets, slaughter-houses, manure and night-soil depots and public buildings of every description which have been constructed or maintained out of the Municipal Fund;

(b) all public streams, rivers, springs, and works for the supply, storage and distribution of water for public purposes and all bridges, buildings, engines, materials and things connected therewith or appertaining thereto, and also any adjacent land (not being private property) appertaining to any public tank or well;

(c) all public sewers and drains, and all sewers, drains, culverts and water-courses in or under any public street or constructed by or for the Corporation alongside any public street, and all works, materials and things appertaining thereto;

(d) all dust, dungs, ashes, refuse, animal matter, or filth or rubbish of any kind, or dead bodies of animals, collected by the Corporation from the streets, houses, privies, sewers, cess-pools or elsewhere or deposited in places fixed by the Corporation;

(e) all public lands, lamp-posts and apparatus connected therewith or appertaining thereto;

(f) all land or other property transferred to the Corporation by the Government or acquired by gift, purchase or otherwise for local public purposes;

(g) all public streets, not being land owned by the Government and the pavements, stone and other material thereof and also trees growing on, and

erections, materials, implements and thing provided for such streets;

(h) all open lands which are neither the property of any person nor of the Government."

This provision makes it clear that all properties in the nature specified therein vested in the Corporation and shall be under the control and management of the Corporation except subject to certain reservations, and sub-clause (h) of this section refers to all open lands which are neither the property of any person nor of the Government, a provision more or less similar to sub-clause (h) of section 36 of the Indore Municipal Act, 1909. Consequently it cannot be doubted that under this provision all open lands, which were not private properties and are also not the properties of any department of the Government, shall vest in the Corporation. Apart from the fact, in the case of the petitioner these properties had already vested in the petitioner long before this Act came into force. It cannot, therefore, be doubted that all open lands within the limits of the Corporation, which are not private lands, continued to vest in the petitioner, and the petitioner had the power and authority under this Act as indicated in section 80 to deal with these lands.

7. What is contended on behalf of the respondents is that what had vested in the petitioner is not the absolute property rights. It is in substance contended that the ownership rights have not been vested in the municipality or the Corporation but only the power of management has been entrusted to it under the respective statutes, and as the Government happens to be the owner of the lands, it is entitled to withdraw the power of management conferred on the local bodies. Reliance in this respect was placed on section 57 of the M.P. Land Revenue Code, which is as under :

"57. (1) All lands belong to the State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the sub-soil of any land are the property of the State Government :

Provided that nothing in this section shall be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property.

(2) Where a dispute arises between the State Government and any person in respect of any right under sub-section (1) such dispute shall be decided by the Sub-Divisional Officer.

(3) Any person aggrieved by any order passed under sub-section (2) may institute a civil suit to contest the validity of the order within a period of one year from the date of such order.

(4) Where a civil suit has been instituted under sub-section (3) against any order, such order shall not be subject to appeal or revision."

It cannot be doubted that this provision itself saves the rights of parties in whom

rights have been vested prior to the passing of this Code. Apparently, therefore, section 57 cannot be used to contend that by this provision the petitioner-Corporation has been divested of the properties which had vested in it. It is also not contended that the Revenue Book Circulars under which the respondents now claim to administer and manage the lands (open sites within the Corporation limits) have any statutory sanction. It is, therefore, clear that whatever incident of property vested in the petitioner under respective provisions of the Acts referred to above could not be taken away by an administrative circular, order or instruction. In this view of the matter, it is not necessary for us to go into the question of the extent of rights that were conferred under the various statutes relating to these properties on the petitioner, and the effect of subsequent enactments on those rights. As discussed above, it cannot be doubted that under all the statutes these properties have been protected as they have vested in the municipality or the petitioner-Corporation. Thus whatever rights vested in the petitioner are rights under a statute. It cannot, therefore, be doubted that by an administrative action the petitioner cannot be deprived of those rights which vested in it under various Acts mentioned above.

8. Learned Government Advocate also placed reliance on State of M.P. v. Narmada Prasad 1968 RN 547 and State of Madhya Pradesh Vs. Atmaram, . In State of M.P. v. Varmada Prasad (supra) the question was about unoccupied area within a municipality which neither vested in nor was given for management to the municipal council, and in that context it was held that the Tahsildar had jurisdiction to take action u/s 248 of the M.P. Land Revenue Code. This decision is based on the admitted circumstances that the land in question neither vested in the Municipal Council nor at any time was transferred to it for management, and in these circumstances that decision can be of no assistance in the present case. The decision in State of M.P. v. Atmaram (supra) also is of no assistance in the present case. In that case, while considering the provisions of the C.P. and Berar Municipalities Act, 1922, a single Judge of this Court held that the Tahsildar had jurisdiction u/s 248 of the M.P. Land Revenue Code to eject a person who is found to have encroached upon an unoccupied land. This decision is based on the assumption that if the municipal committee does not take any action against a person who has encroached upon a public road, the Tahsildar can proceed against him u/s 248 of the M.P. Land Revenue Code. As regards the question of Nazul Officers and the Rules, it has been observed in this decision as under:

"Lastly it is contended that the power of the Tahsildar u/s 248 of the Code is either taken away or controlled by the Nazul Rules. It was, however, conceded that the Nazul Rules are not statutory, and, if that is so, the positive provisions of a statutory enactment like section 248 of the Code cannot be negated or controlled by such rules.

In these circumstances, therefore, the question about the extent of the rights of the Corporation is not necessary to be gone into.

9. Consequently this petition is allowed and the orders passed by the Collector,

Indore, and Commissioner, Indore, on the basis of the Government order, which has been described as instructions, declaring all open lands within the Corporation limits as Nazul lands and directing the petitioner not to deal with or dispose of such lands, and also the order passed on that basis by the Nazul Officer dealing with those lands, are set aside. Consequently all open lands that vest in the petitioner before these orders were passed shall vest in the petitioner. The petitioner shall be entitled to the costs of this petition from the respondents. Counsel's fee Rs. 250 if certified. The outstanding amount of security deposit shall be refunded to the petitioner.